Omni Innovations LLC et al v. Inviva Inc et al Doc. 14

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a Washington Limited Liability company; JAMES S. GORDON, JR., a married individual, **Plaintiffs,** v. **INVIVA, INC., a Kentucky and Delaware corporation, d/b/a American Life Direct, and American Life Insurance Co. of New York; and JOHN DOES, I-X,** **Defendants,**	**NO.** CV-06-1537-JCC **[SECOND]** **AMENDED COMPLAINT**

Pursuant to a stipulation between the parties herein Plaintiffs file this Second Amended Complaint.

PARTIES, JURISDICTION, VENUE

1. Plaintiff OMNI INNOVATIONS, LLC, (hereinafter "OMNI") is a Washington limited liability company duly licensed and registered with the State of Washington, with its principal place of business in Franklin County, Washington.
2. Plaintiff JAMES S. GORDON, JR., d/b/a GORDONWORKS.COM (hereinafter "GORDON") is a married individual residing in Franklin County, Washington.

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3. On information and belief, plaintiffs allege that Defendant INVIVA, INC., ("INVIVA") is a corporation registered in Kentucky and Delaware**,** with its principal places of business in the states of Kentucky and New York, and does business under various names, including, but not limited to: American Life Direct and American Life Insurance Co. of New York.

4. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1332 (diversity).

5. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. § 1367.

6. Venue is proper pursuant to 28 U.S.C. §1391.

GENERAL ALLEGATIONS

7. From at least August 2003 through May 2005, Plaintiff GORDON doing business as GORDONWORKS.COM, provided and enabled computer access for multiple users to a computer server that provides access to the Internet.

8. From and after May 2005, Plaintiff OMNI provided and enabled computer access for multiple users to a computer server that provides access to the Internet.

9. The domain names served by Plaintiffs or one of Plaintiffs include: anthonycentral.com, chiefmusician.net, ehahome.com, itdidnotendright.com, jammtomm.com, jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com, and gordonworks.com (collectively the "Domains" and individually and generically a "Domain").

10. At all times material hereto, for the Domains and each of them, the information that all e-mail addresses at each Domain (the "Recipient Addresses") belong to Washington residents was and is available upon request from the registrant of each Domain, each registrant being a Washington resident and each Domain being registered with a Washington address.

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11. During the time period of approximately August 2003 through the present, Plaintiffs received at the Domains electronic-mail messages sent from or on behalf of Defendant (collectively the “E-mails” or individually and generically as an “Email”).

12. The E-mails, and each of them, were received by Plaintiff Omni’s servers serving the Domains, or at the Domains themselves, and/or on individual Plaintiffs’ email accounts, and on their computers.

13. Each of the E-mails misrepresents or obscures information in identifying the point of origin or the transmission path thereof, and contains header information that is materially false or materially misleading. The misrepresentations include without limitation: “From” lines that fail to accurately identify the sender, and/or any other individual or entity responsible for initiating the email, or operating as a point of origin; IP addresses and host name information that do not match, or are missing or false, in the “from” and “by” tokens in the Received header field.

14. On information and belief, Plaintiffs allege that some of the E-mails used false, or misleading information in registering the domains from which the subject E-mails were sent, and that numerous domains were used to send the E-mails for no other purpose but to avoid spam filters, evade detection, and otherwise obscure the true point of origin of the E-mails.

15. Defendant initiated the transmission of the E-mails, and each of them. In the alternative, Defendant conspired or otherwise acted in collusion with another or others or assisted another or others to transmit the E-mails, and each of them.

16. At all times material hereto, Defendants knew or had reason to know that the Recipient Addresses, and each of them, were and are held by a Washington resident.

17. Plaintiffs never “opted-in”, or otherwise consented to receive commercial email from Defendants.

18. Subsequent to receiving some of the E-mails Plaintiffs gave notice to Defendants to cease sending commercial email to them, which notice was received by Defendants and/or those entities sending the E-mail on Defendants’ behalf.

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19. Subsequent to Plaintiffs' notice, Defendants and/or those entities sending the E-mail on Defendants' behalf continued to send commercial email to Plaintiffs.

FIRST CAUSE OF ACTION – CAN-SPAM ACT
15 U.S.C. §7701 et seq.

20. On the basis of the facts set forth hereinabove, Defendants initiated the transmission of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C. §7704(a)(1), (2) and (4), causing damage to Plaintiffs GORDON and OMNI as the providers of the Internet access service receiving each such E-mail in the amount of $100 for each such E-mail, as provided in 15 U.S.C. §7706 (g) (3).

21. Defendants did willfully and knowingly so act in violation of the provisions of 15 U.S.C. §7701 et seq.

SECOND CAUSE OF ACTION – CEMA
RCW 19.190.010 - .070

22. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with another to initiate, or assisted the transmission of the E-mails, and each of them, in violation of RCW 19.190.020, causing damage to Plaintiffs GORDON and OMNI as the interactive computer service receiving each such E-mail in the amount of $1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT
Ch. 19.86 RCW

23. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiffs GORDON and OMNI as the interactive computer service

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receiving each such E-mail in the amount of $1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

1. Entry of a Judgment in favor of Plaintiffs against the Defendants in the amount of $1,100 per unlawful E-mail, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);

2. Entry of a permanent injunction against the Defendants prohibiting the Defendants from sending or causing to be sent electronic mail messages of any kind or nature to e-mail addresses at the Domains, hereinabove.

3. Such other and further relief as the Court deems just and equitable in the premises.

RESPECTFULLY SUBMITTED this 20th day of March, 2007.

i.JUSTICE LAW, P.C.

/S/ Robert J. Siegel
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Certificate of Service

I, hereby, certify that on April 17, 2007, I filed the attached pleading with this Court via approved electronic filing, and served the following:
Attorneys for Defendants: Derek Newman, Roger Townsend, Newman & Newman.

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